ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA GRANTING A LAND LEASE AND EASEMENT ON A PORTION OF VACANT PROPERTY OWNED BY THE CITY WITH RENEGADE TO HIALEAH BLVD, LLC, A FLORIDA LIMITED LIABILITY COMPANY; FOR A TERM OF 30 YEARS, WITH 3 SUCCESSIVE 10-YEAR RENEWALS, AT A ANNUAL RENT OF \$1.00 IN EXCHANGE FOR CONSTRUCTION OF AN **ENTRANCE** FEATURE FOR THE CITY OF HIALEAH ON THE PORTION OF THE VACANT PROPERTY BY RETAINED THE CITY: AND AUTHORIZING THE MAYOR AND THE ACTING CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO THE LAND LEASE EASEMENT AGREEMENT IN THE SUBSTANTIAL FORM AS ATTACHED HERETO AS EXHIBIT "1"; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Hialeah, Fla., Ordinance 08-08 (Jan. 23, 2008), the City accepted a warranty deed from the property owner, Mr. #5, LLC, who donated 0.51 acres of vacant property to the City for future use as an entrance feature and green space; and

WHEREAS, the successor in interest to Mr. # 5, LLC, Renegade at Hialeah Blvd, LLC, desires to lease back approximately one-third of the property previously donated to the City because the property owner needs additional space for a parking lot for the commercial use to be located on the company's property; and

WHEREAS, the property owner agrees to construct at its cost for an entrance feature on the donated land, subject to the City's approval, in exchange for the leased vacant land, which would otherwise remained as open land; and

WHEREAS, it is in the best interest of the City to obtain a significant entrance feature and developed green space on property located on the northwest corner of the Hialeah-Hialeah Gardens connector Road and on the north side of West 68 Street, Hialeah, Florida.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

ORDINANCE NO.12-78
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Section 1: The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2: The City Council of the City of Hialeah, Florida hereby grants a land lease and easement on a portion of vacant property owned by the City with Renegade at Hialeah Blvd, LLC, a Florida limited liability company, for a term of 30 years, with three successive 10-year renewals, at an annual rent of \$1.00 in exchange for the construction of an entrance feature for the City of Hialeah on the portion of the property retained by the City.

Section 3: The City Council of the City of Hialeah, Florida hereby authorizes the Mayor and the Acting City Clerk, as attesting witness, on behalf of the City, to enter into the Land Lease and Easement Agreement, in the substantial form as attached hereto and made a part hereof as Exhibit "1".

Section 2: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation or suspension of licenses or permits.

Section 3: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent

ORDINANCE NO. <u>12-78</u> Page 3

jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 4: Effective Date.

This ordinance shall become effective when passed by the City Council of the City of Hialeah, Florida and signed by the Mayor of the City of Hialeah, Florida or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED AND ADOPTED this 27 day of November , 2012.

THE FOREGOING ORDINANCE OF THE CITY OF HIALEAH WAS PUBLISHED IN ACCORDANCE WITH THE PROVISIONS OF FLORIDA STATUTE 166.041 PRIOR TO FINAL READING.

Isis Garcia-Marting Council President

Attest:

Approved on this 3 day of

 $D \leftarrow 1201$

Carmen Hernandez, Acting Deputy City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

William M. Grodnick, City Attorney

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Ordinance was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".

LAND LEASE AND EASEMENT AGREEMENT

This LAND LEASE AND EASEMENT AGREEMENT (this "Agreement"), dated and effective as of November ______, 2012, is entered into by and between:

- (1) City of Hialeah, a municipal corporation of the State of Florida, hereinafter designated as "City" and/or "Lessor"; and
- (2) Renegade at Hialeah Blvd, LLC, a Florida limited liability company, hereinafter designated as "Renegade" and/or "Lessee" (each a "Party", and collectively, the "Parties").

RECITALS

WHEREAS, the City and Renegade have reached an agreement whereby (i) the City shall lease to Renegade the real property owned by the City described in Exhibit "A" (the "Lease Site") and (ii) the City shall grant Renegade an easement right in the real property owned by the City described in Exhibit "B" (the "Easement Site"), each pursuant to the terms and conditions set forth hereinafter;

WHEREAS, the Parties desire to enter into this Agreement whereby the City grants the aforementioned lease rights and easement rights Renegade as to the real property described herein, in accordance with this Agreement; and;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, and intending to be legally bound hereby, each Party agrees follows:

Article 1. Definitions

1.1. Unless otherwise defined herein, all capitalized terms shall have the meanings set forth below:

"Applicable Laws" shall mean all laws, constitutions, statutes, codes, ordinances, decrees, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, consent orders and decrees, policies, guidelines or any interpretations of any of the foregoing, including general principles of civil law and equity, issued by any Governmental Entity having or exercising jurisdiction over or otherwise affecting any Party or the real property described herein.

"Consents" shall mean any consents, approvals, waivers or authorizations to be obtained from, or notices to be given to, any persons or entities, and includes Governmental Authorizations.

"Damages" shall mean any and all losses, settlements, expenses, liabilities, obligations, claims, damages (including any governmental penalty or costs of investigation, clean-up and remediation), deficiencies, royalties, interest, costs and expenses (including reasonable attorneys' fees and all other expenses reasonably incurred in investigating, preparing or defending any litigation or proceeding, commenced or threatened incident to the successful enforcement of this Agreement), the extent of which are recoverable under Florida law. Damages also shall include, if applicable, any and all increases in insurance premiums that are reasonably demonstrably attributable to the breach by the City or Renegade, as the case may be, of its representations, warranties, agreements and covenants expressly contained in this Agreement, or negligence, gross negligence, intentional breach or willful misconduct of the City or Renegade, as the case may be, for the two following annual policy periods.

"Easement Rights" shall mean the right to use all necessary and appropriate roads for ingress to, egress from and access to and from all locations at the Easement Site, the right to construct the Easement Site Improvements as set forth in Section 2.3, and to perform maintenance and repair at the Easement Site from time to time, as the case may be.

"Easement Site" shall mean the vacant land owned by the City and more specifically described in Exhibit "B".

"Easement Site Improvements" shall have the meaning ascribed to such term in Section 2.3.

"Effective Date" shall mean ______, 2012.

"Excluded Damages" shall mean any punitive damages.

"Governmental Authorization" shall mean any approval, consent, license, permit, waiver or other authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Entity or otherwise pursuant to any Applicable Law, and any registration with, or report or notice to, any Governmental entity pursuant to any Applicable Law.

"Governmental Entity" shall mean a court, arbitral tribunal, administrative agency or commission or other governmental or other regulatory authority or agency.

"Grace Period" shall have the meaning ascribed to such term in Section 13.1.

"Indemnified Person" of a Party shall mean the Party and its Subsidiary and any shareholder, director, officer, employee or agent of the Party or such Subsidiary.

"Invoice" shall have the meaning ascribed to such term in Section 4.2.

"Land" shall mean (a) the Lease Site and (b) the Easement Site located in the City of Hialeah, Miami-Dade County, Florida, all of which are subject to the lease or easement rights under this Agreement.

"Lease Rights" shall mean Renegade's right lease and use the property as set forth in Section 2.2.

"Lease Site" shall mean the vacant land owned the City and more specifically described in Exhibit "A".

"Lease Site Improvements" - shall have the meaning ascribed to such term in Section 2.2.

"Lease Term" shall have the meaning ascribed to such term in Section 3.1.

"Permitted Uses" as to the Lease Site and the Easement Site shall be as set forth in Section 2.

"Proceeding" shall mean any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, or investigative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Entity.

"Rent" shall have the meaning ascribed to such term in Section 4.1.

"Site" shall mean the Land.

"Successor" shall have the meaning ascribed to such term in Section 11.2.

1.2. Rules of Interpretation.

- (a) When a reference is made in this Agreement to a section or article, such reference shall be to a section or article of this Agreement unless otherwise clearly indicated to the contrary.
- (b) Whenever the words "include", "includes" or "including" are used in this Agreement they shall be deemed to be followed by the words "without limitation."
- (c) The words "hereof", "hereto", "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph and exhibit references are to the articles, sections, paragraphs and exhibits of this Agreement unless otherwise specified.
- (d) The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term, and words denoting any gender shall include all genders. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.
- (e) A reference to any party to this Agreement or any other agreement or document shall include such party's successors and permitted assigns.
- (f) A reference to any legislation or to any provision of any legislation shall include any amendment to, and any modification or re-enactment thereof, and all regulations and statutory instruments issued thereunder or pursuant thereto.
- (g) The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.
- (h) Headings are for convenience only and do not affect the interpretation of the provisions of this Agreement.
- (i) Any Exhibits attached hereto are incorporated herein by reference and shall be considered as part of this Agreement.

Article 2. Grant of Lease and Easement

- 2.1. In consideration of the Rent hereby agreed to be paid to City by Renegade and the agreements and covenants herein made by Renegade and subject to other terms and conditions herein, City hereby (a) leases to Renegade the Lease Site and (b) grants Renegade the Easement Rights to use the Easement Site.
- 2.2. City hereby leases to Renegade that certain parcel described in Exhibit "A", containing approximately 6,703 square feet (or 0.15 acres more or less), together with the exclusive right of ingress and egress, seven (7) days of week, twenty-four (24) hours a day, on foot or motor vehicles, including trucks, and for the installation and paving of an asphalt parking lot and signage over the demised premises (the "Lease Site Improvements"). Renegade shall use the Lease Site for the purpose of constructing, maintaining and operating a parking lot, signage and uses incidental thereto. Prior to the commencement of any construction, Renegade shall submit detailed plans for City's approval. All improvements shall be made at Renegade's expense. All signage shall comply with the provision of the Hialeah code pursuant to the issuance of a sign permit. Signage shall only be provided for advertising only for business or businesses located on site.

- 2.3. City hereby grants to Renegade the Easement Rights to use the Easement Site described in Exhibit "B", containing approximately 22,209.89 square feet (or 0.510 acres more or less), together with the right of ingress and agrees, seven (7) days a week, twenty-four (24) hours a day, to construct the improvements reflected in Exhibit "C" (the "Easement Site Improvements") and as a construction staging area during the construction of said improvements. The Easement Site Improvements shall be constructed in accordance with the Plans dated _______, prepared by ________ (as amended or modified from time to time, the "Plans"). Prior to the commencement of any construction, Renegade shall submit the Plans for City's approval. All improvements shall be made at Renegade's expense.
- 2.4. It is understood and agreed that Renegade's ability to use the Land is contingent upon its obtaining all of the certificates, permits and other approvals that may be required by any federal, state or local authorities (collectively referred herein as the "Development Approvals"). The City shall cooperate with Renegade in its effort to obtain such approvals and shall taken no unreasonable action which would adversely affect the status of the "Property" with respect to the proposed use thereof by Renegade. The City agrees to sign such papers as required to file applications for presentation to the appropriate zoning authority and/or City Council for the property zoning of the Property as required for the use intended by Renegade. Authorization to enter into this Agreement shall not be construed to require that any member of the Hialeah City Council, either individually or collectively, approve any necessary application which will/or may ultimately come before the Hialeah City Council for approval.

Article 3. Term

- 3.1. This Agreement shall be effective from the Effective Date.
- 3.2. The term of the lease to the Lease Site shall commence on the Effective Date of this Agreement and shall expire on the anniversary date occurring thirty (30) years after the Effective Date (the "Lease Term"), unless extended or sooner terminated upon the mutual agreement of the Parties.
- 3.3 The term of the Easement Rights to the Easement Site shall commence on the Effective Date of this Agreement and shall expire on the anniversary date occurring thirty (30) years after the Effective Date (the "Easement Term"), unless extended or sooner terminated upon the mutual agreement of the Parties.
- The Agreement may be automatically renewed for three (3) additional terms of ten (10) years at the option of the Lessee if the Lessee is in compliance with the Agreement at the time of renewal. The Lessee shall provide a letter to the City exercising its option to renewal no less than ninety (90) days prior to the expriation of the Lease Term.

Article 4. Rent

- 4.1. The yearly rent for the Land (the "Rent") shall be One and 00/100 Dollars (\$1.00) per year commencing on the Effective Date and payable thereafter on or prior to each anniversary of the Effective Date of this Agreement.
- 4.2. Renegade shall pay, by means of check or such other method of payment as determined by Renegade in immediately available funds on or prior to each anniversary of the Effective Date of this Agreement ("Rent Due Dates").

Article 5. Representations, Warranties and Covenants

- 5.1. City hereby covenants, represents and warrants to Renegade that all of the representations and warranties contained in this Section 5.1 are true and correct in all material respects as of the Effective Date.
 - (a) <u>Organization</u>. City is a municipal corporation duly organized and validly existing under the laws of the State of Florida and has full power and authority to own and lease the Land.
 - (b) <u>Authorization</u>. City has full power and authority to execute and deliver this Agreement. The execution, delivery and performance by City of this Agreement have been duly authorized by all municipal actions on the part of City that are necessary to authorize the execution, delivery and performance by City of this Agreement.
 - (c) <u>Binding Agreement</u>. This Agreement has been duly executed and delivered by City and, assuming due and valid authorization, execution and delivery hereof by Renegade, is a valid and binding obligation of City, enforceable against City in accordance with its terms.
 - (d) <u>Title and Consents</u>. City is the only legal and beneficial owner of the Land and has requisite power to grant the Lease Rights or the Easement Rights hereunder to Renegade.
 - (e) <u>Brokerage</u>. City has not made any agreement or taken any other action which might cause any Person to become entitled to a broker's or finder's fee or commission as a result of this Agreement.
 - (f) NO OTHER REPRESENTATIONS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT, NEITHER CITY NOR ANY OTHER PERSON OR ENTITY ACTING ON BEHALF OF CITY, MAKES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED.
- 5.2. Renegade hereby covenants, represents and warrants to City that all of the representations and warranties contained in this Section 5.2 are true and correct in all material respects as of the Effective Date.
 - (a) <u>Organization</u>. Renegade is a limited liability company duly organized and validly existing under the laws of the State of Florida and has full power and authority to carry on its business as heretofore conducted.
 - (b) <u>Authorization</u>. Renegade has full corporate power and authority to execute and deliver this Agreement. The execution, delivery and performance by Renegade of this Agreement have been duly authorized by all corporate actions on the part of Renegade that are necessary to authorize the execution, delivery and performance by Renegade of this Agreement.
 - (c) <u>Binding Agreement</u>. This Agreement has been duly executed and delivered by Renegade and, assuming due and valid authorization, execution and delivery hereof by City, is a valid and binding obligation of Renegade, enforceable against City in accordance with its terms.
 - (d) <u>Construction of Improvements</u>. Renegade may construct the improvements on the Lease Site and the Easement Site, as applicable, at any time within the Term of this Agreement.
 - (e) <u>Brokerage</u>. Renegade has not made any agreement or taken any other action which might cause any Person to become entitled to a broker's or finder's fee or commission as a result of this Agreement.
 - (f) NO OTHER REPRESENTATIONS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT, NEITHER RENEGADE NOR ANY OTHER PERSON OR ENTITY ACTING ON BEHALF OF RENEGADE, MAKES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED.

- 5.3. Each Party covenants and agrees to endeavor to cooperate with the other Party so as to minimize any interference with the other Party's operation of its business.
- 5.4. With respect to Renegade's use of the Land, from and after the Effective Date, Renegade shall comply in all material respects with all Applicable Laws applicable to the Land, including the environmental laws, and with the terms of all Government Authorizations relating to Renegade's operations at the Land arising after the Effective Date.
- 5.5. Renegade covenants and agrees to reimburse City, in full and promptly upon demand, if Renegade sustains any material Damages or is reasonably required to expend any money as a result of a default by Renegade hereunder; provided, however, Renegade shall not reimburse City for any damages resulting from (a) reasonable wear and tear to the Land, (b) Renegade's maintenance of the Land as provided for herein, or (c) to the extent such Damages arises from City's gross negligence or intentional misconduct.
- 5.6. City will deliver actual possession of the Lease Site and Easement Site free and clear of occupancy.
- 5.7. City covenants and agrees to reimburse Renegade, in full and promptly upon demand, if Renegade sustains any material Damages or is reasonably required to expend any money as a result of a default by City hereunder; provided, however, City shall not reimburse Renegade for any damages resulting from (a) reasonable wear and tear to the Land, or (b) to the extent such Damage arises from Renegade's gross negligence or intentional misconduct.

Article 6. Maintenance and Other Expenses

All costs, expenses and obligations relating to the Land which arise or are attributable to Renegade's occupancy or use of either the Lease Site or the Easement Site during the Lease Term, shall be paid by Renegade. Renegade hereby assumes all other responsibilities normally identified with the ownership of the Land, such as operation, repair, replacement, maintenance and management of the Land, including repairs to the paved areas, driveways and signage on the Land. During the Term, if Renegade fails to maintain the Land in reasonably good repair and condition, City may so notify Renegade and perform such repair and shall be reimbursed upon demand by Renegade for such costs based on invoices for work actually performed. Without limiting the foregoing, except as otherwise provided in this Agreement, the Parties agree that City shall not be required or obligated to furnish any services or facilities to the Lease Site or the Easement Site. All costs, expenses and obligations relating to the Easement Site and taxes that City should pay, which arise or are attributable to the period of the Term shall be paid by City.

Article 7. Recording of Agreement

The Parties consent to recording a copy of this Agreement or a memorandum of same amongst the public records of Miami-Dade County, Florida. The recording shall include such material matters provided in this Agreement as the Parties may agree to register, provided that the terms of such Lease Rights and Easement Rights shall be the same as the terms and conditions of this Agreement. The expenses and costs of such recording of this Agreement shall be borne wholly by Renegade.

Article 8. Use and Maintenance

Renegade shall not occupy or use the Land for any purpose whatsoever, other than as set forth herein or as otherwise permitted by City, and in compliance with all Applicable Laws.

Article 9. Termination

- 9.1. <u>Termination</u>. This Agreement may be terminated at any time during the Term of this Agreement upon the occurrence of any of the following events:
 - (a) by a Party serving a written notice of termination to the other Party in the event of a material breach or default by such other Party of its obligations hereunder, which default shall not have been cured within ninety (90) days after written notice is provided by the non-breaching Party to the breaching Party; or
 - (b) in the event that any of such applications (as set forth in Section 2.5) should be finally rejected or any certificate, permit, license or approval issued to Renegade is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority or soil boring tests are found to be unsatisfactory so that Renegade in its sole discretion will be unable to use either the Lease Site or the Easement Site for its intended purposes, Renegade shall have the right to terminate this Agreement. All rental paid to said termination date shall retained by the City.
- 9.2. Termination of this Agreement shall be without prejudice to the accrued rights and liabilities of the Parties prior to the termination of this Agreement.
- 9.3. In the event of the termination of this Agreement pursuant to Section 10.1, notice of a Party's exercise of its right to terminate shall be given to the other Party in the manner set forth in Section 16.2.

Article 10. Sublease, Assignment and Sale

- 10.1. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Renegade may, upon written notice to the City (but without the obligation to obtain the consent of City), assign this Agreement or any of its rights and obligations under this Agreement to any person, entity or organization that succeeds (by purchase, merger, operation of law or otherwise) to all or substantially all of the capital stock, assets or business of such party, if such person or entity agrees in writing to assume and be bound by all of the relevant obligations of such Party under this Agreement. As to other parties, this Agreement may not be sold, subleased, assigned or transferred without the written consent of the City.
- 10.2 Should the City, at any time during the term of this Agreement, decide to sell all or any part of the Land to a purchaser other than Renegade, such sale shall be under and subject to this Agreement and Renegade's rights hereunder.

Article 11. Quiet Enjoyment; Indemnification.

- 11.1. Without prejudice to City's rights under this Agreement or under the Applicable Laws, so long as Renegade pays the Rent and materially observes all other terms, conditions and covenants hereof, City shall ensure that Renegade has the right to quietly enjoy the Land without hindrance, molestation or interruption during the Term, subject to the terms and conditions of this Agreement.
- 11.2. City shall indemnify Renegade and its Indemnified Persons (the "Renegade Indemnified Parties"), and hold the Renegade Indemnified Parties harmless from and against, any and all Damages arising out of, resulting from or relating to claims by third parties arising from the negligent acts of City, except to the extent such Damage is caused by the negligence or willful misconduct of any such Renegade Indemnified Party, subject to the limitations of Section 768.28, Florida Statutes and the amounts stated in Section 768.28, Florida Statutes, whether the claim is in contract or in tort. This indemnity shall not be construed as a waiver of sovereign immunity.

- 11.3. Renegade see shall indemnify City and its Indemnified Persons (the "City Indemnified Parties") and hold the City Indemnified Parties harmless from and against, any and all Damages arising out of, resulting from or relating to claims by third parties arising from the negligent acts of Renegade, except to the extent such Damage is caused by the negligence or willful misconduct of any such City Indemnified Party.
- 11.4. In no event shall a Party be liable for Excluded Damages.

Article 12. Surrender.

Upon the expiration or termination of this Agreement, City and Renegade shall consult in good faith to determine a reasonable grace period (which shall not be more than 6 months) (the "Grace Period") for Renegade to peaceably and quietly vacate and surrender the Lease Site to City.

Article 13. Disputes and Governing Law.

This Agreement shall be governed, interpreted, construed and regulated in accordance with the laws of the State of Florida.

Article 14. Insurance.

14.1. The City agrees that Renegade will insure against any loss or damage which could be covered by a comprehensive general liability insurance policy in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.

Article 15. Condemnation.

If the whole of the Lease Site, the Easement Site or such portion thereof as will make the premises unusable for the purposes intended herein, are condemned by any legally constituted authority for any public use or purpose other than as intended herein, then in either of said events the Term hereby granted shall cease from the time when possession thereof is taken by public authorities, and Rent hereunder shall terminate as of that date. (Any and all Rent paid prior to said termination shall kept by the City.) Any lesser condemnation shall in no way affect the respective rights and obligations of the City and Renegade hereunder. Nothing in this provision shall be construed to limit or affect Renegade's rights to an award of compensation against any third party other than the City of any eminent domain proceeding for the taking of Renegade's leasehold interest hereunder.

Article 16. Miscellaneous.

- 16.1. Exercise of Right. A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a Party does not prevent a further exercise of that or of any other right, power or remedy. A failure to exercise a right, power or remedy or a delay in exercising a right, power or remedy by a Party does not prevent such Party from exercising the same right thereafter. The failure of any Party to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of those rights.
- 16.2. Notices. Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted to be given to any Party shall be in writing and shall be deemed duly given only upon delivery to

the Party personally (including by reputable overnight courier service), when telecopied (with confirmation of transmission having been received) during normal business hours or five (5) days after being mailed by registered or certified mail (return receipt requested), with postage and registration or certification fees thereon prepaid, addressed to the Party at its address set forth below (or at such other address for a party as shall be specified by such Party by like notice):

If to City, to: City of Hialeah

c/o Mayor's Office 501 Palm Avenue

Hialeah, Florida 33010-4789

If to Renegade, to: Renegade at Hialeah Blvd., LLC

c/o Luis Machado

305 Alcazar Avenue, Suite Coral Gables, Florida 33134

with a copy to: Vila, Padron & Diaz, P.A.

c/o Rene Diaz, Esq.

201 Alhambra Circle, Suite 702 Coral Gables, Florida 33134

16.3. Fees and Expenses. All costs and expenses incurred in connection with this Agreement shall be paid by the Party incurring such expenses, except as specifically provided to the contrary in this Agreement.

- 16.4. Entire Agreement; No Third Party Beneficiaries. This Agreement (a) constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written or oral, between the Parties with respect to the subject matter hereof and (b) is not intended to confer upon any person other than the Parties hereto any rights or remedies hereunder.
- 16.5. Severability of Provisions. Any term or provision of this Agreement that is held by a court of competent jurisdiction or other authority to be unlawful, invalid, void or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction or other authority declares that any term or provision hereof is unlawful, invalid, void or unenforceable, the Parties agree that the court making such determination shall have the power to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any unlawful, invalid, void or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the unlawful, invalid or unenforceable term or provision.
- 16.6. <u>Amendment and Modification</u>. This Agreement (for the avoidance of doubt, including Exhibits attached hereto) may be amended, modified and supplemented in any and all respects, but only by a written instrument signed by the Parties expressly stating that such instrument is intended to amend, modify or supplement this Agreement.
- 16.7. <u>Counterparts</u>. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement.

- 16.8. <u>Election of Remedies</u>. Neither the exercise of nor the failure to exercise a right or to give notice of a claim under this Agreement shall constitute an election of remedies or limit any Party in any manner in the enforcement of any other remedies that may be available to such Party, whether at law or in equity.
- 16.9. <u>No Merger</u>. It is the intention of the Lessor to lease the Lease Site to the Lessee free of any merger of the fee estate and leasehold estate or any other interests that may be held contemporaneously by Lessor, or any of them, and Lessee. No such merger will occur until such time as the Lessee executes a written instrument specifically effecting such merger and duly records the same.
- 16.10 <u>Subordination</u>. At the City's option, this Agreement shall be subordinate to any mortgage by the City which from time to time may encumber all or part of the Lease Site and/or the Easement Site or any applicable right of way; provided, however, every such mortgage shall recognize the validity of this Agreement in the event of a foreclosure of the City's interest and also Renegade's right to remain in occupancy of and have access to the Lease Site and the Easement Site as long as Renegade is not in default of this Agreement. Renegade shall execute whatever instruments as may be reasonably be required to evidence this subordination clause.

{Signature Page to Follow}

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IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized representatives as of the date first above written.

Signed, sealed and delivered in the presence of:	The City:
Attest:	CITY OF HIALEAH, a Florida municipal corporation
	By:
City Clerk	
APPROVED AS TO FORM AND LEGAL SUFFICIENCY	
, City Attorney	
Signed, sealed and delivered in the presence of:	RENEGADE:
Attest:	RENEGADE AT HIALEAH BLVD., LLC, a Florida limited liability company
	By:

EXHIBIT Y

SKETCH TO ACCOMPANY LEGAL DESCRIPTION SECTION 28, TOWNSHIP 52 SOUTH, RANGE 40 EAST

SURVEYOR'S NOTES:

I- DATE OF COMPLETION:

09-05-2012

II- FOLIO:

THIS PARCEL OF LAND DESCRIBED HEREIN IS PART OF FOLIO Folio No.: 04-2028-001-0713

III- LEGAL DESCRIPTION

(SEE ATTACHED PAGE 2 OF 3)

IV- CLIENT INFORMATION:

This Sketch to Accompany Legal Description was prepared at the insistence of and certified to:

CITY OF HIALEAH

V- SÜRVEYOR'S CERTIFICATE:

I hereby certify: That this "Sketch to Accompany Legal Description" and the Survey Map resulting therefrom was performed under my direction and is true and correct to the best of my knowledge and belief and further, that said "Sketch to accompany Legal Description" meets the intent of the applicable provisions of the "Minimum Technical Standards for Land Surveying in the State of Florida", pursuant to Rule 5J-17 of the Florida Administrative Code and its implementing law, Chapter 472.027 of the Florida Statutes.

NOTICE: Not valid without the signature and original raised seal of a Florida Licensed Surveyor and Mapper. Additions or deletions to Survey Maps by other than the signing party are prohibited without the written consent of the signing party.

PROFESSIONAL LAND SURVEYORS AND MAPPERS 12211 SW 129th CT. MIAMI FL 33186 tel: 305-316-8474 fax: 305-378-1662 www.3tci.com

SKETCH TO ACCOMPANY LEGAL DESCRIPTION SECTION 28, TOWNSHIP 52 SOUTH, RANGE 40 EAST

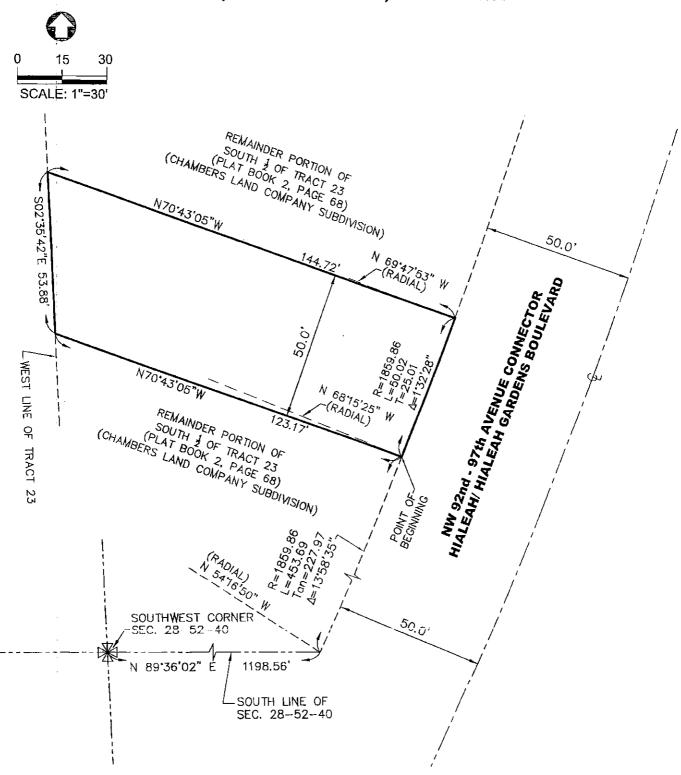
LEGAL DESCRIPTION:

THAT PORTION OF THE SOUTH 1/2 OF TRACT 23, OF "CHAMBERS LAND COMPANY SUBDIVISION", ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, AT PAGE 68, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA. LYING IN THE SW 1/4 OF SECTION 28, TOWNSHIP 52 SOUTH, RANGE 40 EAST, MIAMI-DADE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID SECTION 28; THENCE RUN N89°36'02"E ALONG THE SOUTH LINE OF SAID SECTION 28 FOR A DISTANCE OF 1198.56 FEET TO A POINT OF INTERSECTION WITH THE ARC OF A CIRCULAR CURVE CONCAVE TO THE NORTHWEST, THE CENTER OF WHICH BEARS N54° 16'50"W FROM SAID POINT OF INTERSECTION; THENCE RUN NORTHEASTERLY, ALONG THE ARC OF SAID CIRCULAR CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 1859.86 FEET, THROUGH A CENTRAL ANGLE OF 13°58'35", FOR AN ARC DISTANCE OF 453.69 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL, CONTINUE NORTHEASTERLY ALONG THE ARC OF SAID CIRCULAR CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 1859.86 FEET, THROUGH A CENTRAL ANGLE OF 1°32'28" FOR AN ARC DISTANCE OF 50.02 FEET TO A POINT, THE CENTER OF WHICH BEARS N69° 47'53"W FROM SAID POINT; THENCE RUN N70°43'05"W FOR A DISTANCE OF 144.72 FEET TO THE POINT OF INTERSECTION WITH THE WEST LINE OF SAID TRACT 23; THENCE RUN S02°35'42"E ALONG THE AFOREMENTIONED WEST LINE OF TRACT 23 FOR A DISTANCE OF 53.88 FEET TO THE POINT OF BEGINNING CONTAINNING A NET AREA OF 6,703 SQ. FT OR 0.15 ACRES MORE OR LESS.

SKETCH TO ACCOMPANY LEGAL DESCRIPTION

SECTION 28, TOWNSHIP 52 SOUTH, RANGE 40 EAST



PROFESSIONAL LAND SURVEYORS AND MAPPERS 12211 SW 129th CT. MIAMI FL 33186 tel: 305-316-8474 fax: 305-378-1662 www.3tcl.com

SHEET 2 OF 3 (NOT VALID WITHOUT SHEET 1 AND 3 OF 3)

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA ACCEPTING A WARRANTY DEED FROM MR. # 5, LLC, FLORIDA LIMITED LIABILITY COMPANY. **CONVEYING** TRIANGULAR-SHAPED **VACANT** PARCEL OF LAND TO THE CITY OF HIALEAH, FLORIDA CONSISTING OF APPROXIMATELY 0.510 ACRES IN CONSIDERATION OF \$10.00 AND OTHER GOOD AND **VALUABLE** CONSIDERATION, A COPY OF THE WARRANTY DEED IS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1". PROPERTY LOCATED ON THE NORTHWEST CORNER OF THE HIALEAH/HIALEAH GARDENS CONNECTOR ROAD AND ON THE NORTH SIDE OF WEST 68 STREET (NW 122 STREET), HIALEAH, FLORIDA. REPEALING ALL ORDINANCES OR **PARTS** OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the property owner offered to donate the property to the City of Hialeah consisting of approximately 0.510 acres of vacant land to be used for a public purpose; and

WHEREAS, the City of Hialeah finds that it in its best interest to accept this offer of land for future use as an entrance feature to the City and green space.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

ORDINANCE NO. 08-08 Page 2

Section 2: The City of Hialeah, Florida hereby accepts a warranty deed from Mr. # 5, LLC, a Florida limited liability company, conveying to a triangular-shaped vacant parcel of land to the City of Hialeah, Florida consisting of approximately 0.510 acres in consideration of \$10.00 and other good and valuable consideration, a copy of which is attached hereto and made a part hereof as Exhibit "1". Property located on the northwest corner of the Hialeah/Hialeah Gardens Connector Road and on the north side of West 68 Street (NW 122 Street), Hialeah, Florida.

Section 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty described above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

ORDINANCE NO. Page 3

Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 22nday of January , 2008

THE FOREGOING ORDINANCE OF THE CITY OF HIALEAH WAS PUBLISHED IN ACCORDANCE WITH THE PROVISIONS OF FLORIDA STATUTE 166.041 PRIOR TO FINAL READING.

Esteban Boyo Council President

Attest:

Approved on this 23 day of

, 2008

Rafael/E. Granado, City Clerk

Mayor Julio Robaina

Approved as to form and legal sufficiency:

William Trookie

William M. Grodnick. City Attorney

s:\wmg\legis\ord-2007\deedacceptvacantparcelmr#5llc.doc

Ordinance was adopted by a 6-0-1 vote with Councilmembers Bovo, Casals-Muñoz, Garcia-Martinez, Gonzalez, Hernandez, and Yedra voting "Yes" and Councilmember Caragol absent.

CEN 2008R0154294

Prepared By and Return To: Felix M. Lasarte, Esq. Holland & Knight, LLP 701 Brickell Avenue, Suite 3000 Miami, Florida 33131

Folio No.: #04-2028-001-0712

CFN 2008R0154294
OR Bk 26233 Pas 0255 - 259; (5pas)
RECORDED 02/26/2008 09:48:37
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

WARRANTY DEED

This Warranty Deed is executed this 1st day of January, 2008, by MR #5, LLC, a Florida Limited Liability Company, hereinafter referred to as the "grantor", to the CITY OF HIALEAH, a Florida Municipal Corporation, whose post office address is: 501 Palm Avenue, Hialeah, FL 33010, hereinafter called the "grantee":

(Wherever used herein the terms "grantor" and "grantee" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Witnesseth, That the grantor, for and in consideration of the sum of Ten (\$10.00), and other good and valuable consideration, in hand and paid by said grantee, the receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in County of Miami-Dade, State of Florida, to-wit:

That portion of the South 1/2 of Tract 23, of "CHAMBERS LAND COMPANY SUBDIVISION", according to the Plat thereof as recorded in Plat Book 2, Page 68, of the Public Records of Miami-Dade County, Florida, lying in the SW 1/4 of Section 28, Township 52 South, Range 40 East, Miami-Dade County, Florida, more particularly described a follows:

Commence at the Southwest corner of said Section 28, the Standard Plane Rectangular Coordinates for the East Zone of Florida for said point being X=711739.45, y=563973.12; thence run N89°36'02"E along the South line of said Section 28 for a distance of 1198.56 feet to the point of intersection with the arc of a circular curve concave to the Northwest, the center of which bears N54°16'50"W from said point of intersection; thence run Northeasterly, along the arc of said circular curve concave to the Northwest, having a radius of 1859.86 feet, through a central angle of 06°29'28", for an arc distance of 210.70 feet to the point of intersection with the West line of said Tract 23 said point being the Point of Beginning of the herein described parcel, the center of which bears N60°46'18"W from said point of Beginning; thence continue Northeasterly along the arc of said circular curve concave to the Northwest, having a radius of 1859.86 feet, through a central angle of 9°01'35" for an arc distance of 293.00 feet to a point, the center of which bears N69°47'53"W from said point; thence run N70°43'05"W for a distance of 144.72 feet to the point of



intersection with the West line of said Tract 23; thence run S02°35'42"E along the aforementioned West line of Tract 23 for a distance of 314.00 feet to the Point of Beginning. Containing a net area of 0.510 acres more or less.

SUBJECT TO unpaid taxes for 2008, and all subsequent years, and to easements, restrictions, applicable zoning, reservations and limitations of record, if any. Grantor warrants and represents that this property is not his homestead.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in any way appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

And the said grantor will only warrant and forever defend the right and title to the above described property unto the said grantee against the claims of those persons claiming by, through or under grantor, but not otherwise.

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in presence of:
(Two witness signatures required)

(Signature of first witness)

(Signature of Grantor)

Luis Machado, Manager for MR #5, LLC
a Florida Limited Liability Company
(Printed Name of Grantor)

Address of Grantor:
P. O. Box 520682

(Printed name of second witness)

Miami, FL 33152-0682

STATE OF FLORIDA COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me, a Notary Public, this 1st day of January, 2008, by Luis Machado, As Manager for MR #5, LLC, a Florida Limited Liability Company, who is personally known to me) or who produced the following

identification:

Commit CO0051981
Expires 5/9/2011
Floride Notary Assn., Inc

otary Public, State of Florida

Printed Name of Notary Public My Commission Expires:

4936006_v2

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA ACCEPTING A WARRANTY DEED FROM MR. #5, LLC, FLORIDA LIMITED LIABILITY Α COMPANY, **CONVEYING** TRIANGULAR-SHAPED **VACANT** PARCEL OF LAND TO THE CITY OF HIALEAH, FLORIDA CONSISTING OF 0.510 ACRES APPROXIMATELY CONSIDERATION OF \$10.00 AND VALUABLE OTHER GOOD CONSIDERATION, A COPY OF THE WARRANTY DEED IS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1". PROPERTY LOCATED ON THE NORTHWEST CORNER OF THE HIALEAH/HIALEAH GARDENS CONNECTOR ROAD AND ON THE NORTH SIDE OF WEST 68 STREET STREET), HIALEAH, (NW 122 FLORIDA. REPEALING ALL **ORDINANCES** OR **PARTS** OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

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ORDINANCE NO. 08-08 Page 3

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PASSED and ADOPTED this 22nday of January , 2008.

THE FOREGOING ORDINANCE OF THE CITY OF HIALEAH WAS PUBLISHED IN ACCORDANCE WITH THE PROVISIONS OF FLORIDA STATUTE 166.041 PRIOR TO FINAL READING.

Estel an Boyo
Council President

Attest:

Approved on this 23 day of

, 2008.

Rafael E. Granado, City Clerk

Mayor Julio Robaina

Approved as to form and legal sufficiency:

William M. Gradaio City Attorney

s:\wmg\legis\ord-2007\deedacceptvacantparcelmr#5llc.doc

Ordinance was adopted by a 6-0-1 vote with Councilmembers Bovo, Casals-Muñoz, Garcia-Martinez, Gonzalez, Hernandez, and Yedra voting "Yes" and Councilmember Caragol absent.

CEN 2008R0154294

OR Bk 26233 Pss 0255 - 259; (5pss)
RECORDED 02/26/2008 09:48:37
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

Prepared By and Return To: Felix M. Lasarte, Esq. Holland & Knight, LLP 701 Brickell Avenue, Suite 3000 Miami, Florida 33131

Folio No.: #04-2028-001-0712

WARRANTY DEED

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(Wherever used herein the terms "grantor" and "grantee" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Witnesseth, That the grantor, for and in consideration of the sum of Ten (\$10.00), and other good and valuable consideration, in hand and paid by said grantee, the receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in County of Miami-Dade, State of Florida, to-wit:

That portion of the South 1/2 of Tract 23, of "CHAMBERS LAND COMPANY SUBDIVISION", according to the Plat thereof as recorded in Plat Book 2, Page 68, of the Public Records of Miami-Dade County, Florida, lying in the SW 1/4 of Section 28, Township 52 South, Range 40 East, Miami-Dade County, Florida, more particularly described a follows:

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TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in any way appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

And the said grantor will only warrant and forever defend the right and title to the above described property unto the said grantee against the claims of those persons claiming by, through or under grantor, but not otherwise.

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written. Signed_sealed and delivered in presence of: (Two witness signatures required) (Signature of Grantor) Luis Machado, Manager for MR #5, LLC a Florida Limited Liability Company (Printed name of first witness) (Printed Name of Grantor) Address of Grantoc: P. O. Box 520682 (Signature of second Miami, FL 33152-0682 lane t Hemandez (Printed name of second witness)

STATE OF FLORIDA COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me, a Notary Public, this 1st day of January, 2008, by Luis Machado, As Manager for MR #5, LLC, a Florida Limited Liability Company, who is personally known to me or who produced the following identification:

JUNATRA GONZALEZ BENTTEZ

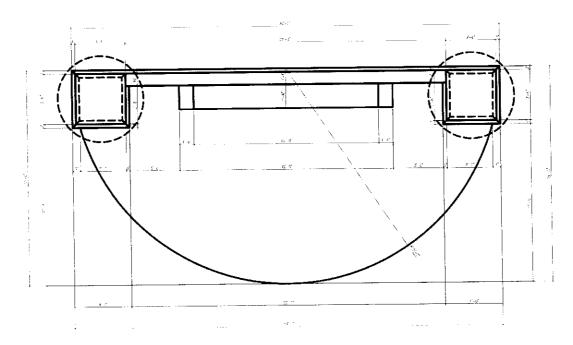
Consul 200651861

Explires 6/4/2011

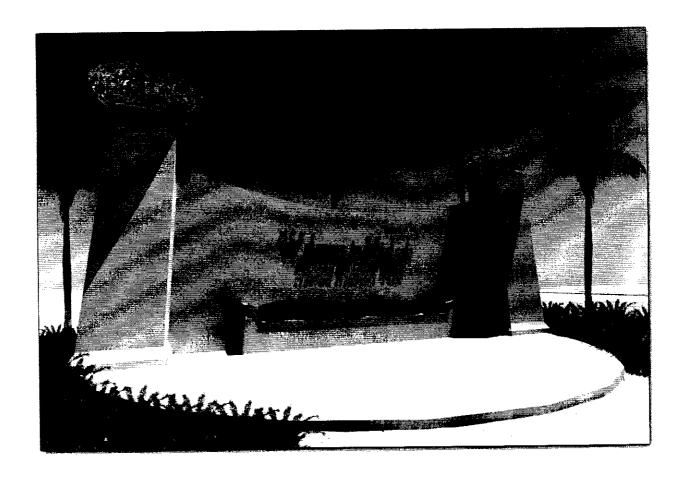
Florida Notary Asan, Inc.

Printed Name of Notary Public My Commission Expires:

Marcia Machado Plaza



FLOOR PLAN



RAMOSMARTINEZ architects

